

HOUSE BILL NO. 348

INTRODUCED BY D. HIMMELBERGER

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING CERTAIN EXEMPTIONS TO LOBBYIST LICENSING, LOBBYIST REGISTRATION, AND PRINCIPAL REPORTING REQUIREMENTS WHEN A LOBBYIST RECEIVES LESS THAN A SPECIFIED DOLLAR AMOUNT AS PAYMENT FOR LOBBYING SERVICES; AND AMENDING SECTIONS 5-7-102, 5-7-103, 5-7-112, AND 5-7-208, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Appointed state official" means an individual who is appointed:

(a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

(2) "Business" means:

(a) a holding or interest whose fair market value is greater than \$1,000 in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(3) "Commissioner" means the commissioner of political practices.

(4) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(5) "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but

1 who has not yet been sworn in.

2 (6) "Elected local official" means an elected officer of a county, a consolidated government, an
3 incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill
4 the unexpired term of an elected local official and an individual who has been elected to a local office but who
5 has not yet been sworn in.

6 (7) (a) "Elected state official" means an individual holding a state office filled by a statewide vote of all
7 the electors of Montana or a state district office, including but not limited to public service commissioners and
8 district court judges. The term includes an individual appointed to fill the unexpired term of an elected state official
9 and an individual who has been elected to a statewide office but who has not yet been sworn in.

10 (b) The term does not include a legislator.

11 (8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by
12 a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal
13 official and an individual who has been elected to a tribal office but who has not yet been sworn in.

14 (9) "Individual" means a human being.

15 (10) "Legislator" means an individual holding public office as a representative or a senator in the Montana
16 legislature. The term includes an individual who has been elected to the legislature but who has not yet been
17 sworn in.

18 (11) (a) "Lobbying" means:

19 (i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature
20 or legislators; and

21 (ii) the practice of promoting or opposing official action of any public official or the legislature.

22 (b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed
23 by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in
24 an official governmental capacity.

25 (12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

26 (b) Lobbyist does not include:

27 (i) an individual acting solely on the individual's own behalf; or

28 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
29 personal contact involving lobbying with a public official or the legislature on behalf of the lobbyist's principal; ~~or~~

30 ~~(iii) an individual who receives payments from one or more persons that total less than the amount~~

~~specified under 5-7-112 in a calendar year.~~

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials or the legislature.

(13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

(i) to a lobbyist to influence legislation or official action by an elected local official, a public official, or the legislature;

(ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or

(iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

(16) (a) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government or a legislator.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official or the legislature for the purpose of obtaining employment;

(c) attempting to influence the action of a public official or the legislature on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official or the legislature with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official or the legislature."

Section 2. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses -- fees -- eligibility -- waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, except as provided in subsection (5), a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is \$150 for each lobbyist except as provided in subsection (5) or unless the fee is waived for hardship reasons under this subsection. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within 10 business days of the date of the filing of the application, excluding the date on which the application is filed.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) \$50 in the general fund; and

(b) \$100 in the state special revenue account provided for in 5-11-1112.

(5) A lobbyist who receives payments from one or more principals that total less than the amount specified under 5-7-112 in a calendar year is not required to pay the license fee ~~or file an application form as provided for in subsection (1).~~

(6) The commissioner may adopt rules to implement the waiver provisions of subsections (1) and (5)."

Section 3. Section 5-7-112, MCA, is amended to read:

1 **"5-7-112. Payment threshold -- inflation adjustment.** For calendar year 2004, the payment threshold
2 referred to in ~~5-7-102~~, 5-7-103, ~~and 5-7-208~~ is \$2,150. The commissioner shall adjust the threshold amount
3 following a general election by multiplying the threshold amount valid for the year in which the general election
4 was held by an inflation factor, adopted by the commissioner by rule. The rule must be written to reflect the annual
5 average change in the consumer price index from the prior year to the year in which the general election is held.
6 The resulting figure must be rounded up or down to the nearest \$50 increment. The commissioner shall adopt
7 the adjusted amount by rule."

8
9 **Section 4.** Section 5-7-208, MCA, is amended to read:

10 **"5-7-208. Principals to file report.** (1) A principal subject to this chapter shall file with the commissioner
11 a report of payments made for the purpose of lobbying. ~~A principal is subject to the reporting requirements of this~~
12 ~~section only if the principal makes total payments for the purpose of lobbying that exceed the amount specified~~
13 ~~under 5-7-112 during a calendar year.~~

14 (2) If payments are made solely to influence legislative action, a report must be made:

15 (a) by February 15th of any year the legislature is in session and must include all payments made in that
16 calendar year prior to February 1;

17 (b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000
18 or more and must include all payments made during the prior calendar month; and

19 (c) no later than 30 days following adjournment of a legislative session and must include all payments
20 made during the session, except as previously reported.

21 (3) If payments are made to influence any other official action by a public official or made to influence
22 other action and legislative action, a report must be made:

23 (a) by February 15th of the calendar year following the payments and must include all payments made
24 during the prior calendar year; and

25 (b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000
26 or more and must include all payments made during the prior calendar month.

27 (4) If payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and
28 (3)(a), the principal shall file a report stating that fact.

29 (5) Each report filed under this section must:

30 (a) list all payments for lobbying in each of the following categories:

- 1 (i) printing;
- 2 (ii) advertising, including production costs;
- 3 (iii) postage;
- 4 (iv) travel expenses;
- 5 (v) salaries and fees, including allowances, rewards, and contingency fees;
- 6 (vi) entertainment, including all foods and refreshments;
- 7 (vii) telephone and telegraph; and
- 8 (viii) other office expenses;
- 9 (b) itemize, identifying the payee and the beneficiary:
- 10 (i) each separate payment conferring \$25 or more benefit to any public official when the payment was
- 11 made for the purpose of lobbying; and
- 12 (ii) each separate payment conferring \$100 or more benefit to more than one public official, regardless
- 13 of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner
- 14 or other function to which all senators or all representatives have been invited, the beneficiary may be listed as
- 15 all members of that group without listing separately each person who attended;
- 16 (c) list each contribution and membership fee that amounts to \$250 or more when aggregated over the
- 17 period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and
- 18 the issue area, if any, for which the payment was earmarked;
- 19 (d) list each official action on which the principal or the principal's agents exerted a major effort to
- 20 support, oppose, or modify, together with a statement of the principal's position for or against the action; and
- 21 (e) be kept by the commissioner for a period of 10 years."

22 - END -